

TOWN OF CLAYTON, N. MEX.

JUNE 13, 1956.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 218]

The Committee on the Judiciary, to whom was referred the bill (S. 218) for the relief of the town of Clayton, N. Mex., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 881, 84th Congress, which is appended hereto and made a part of this report. Therefore, your committee concurs in the recommendation of the Senate.

[S. Rept. 881, 84th Cong., 1st sess.]

The purpose of S. 218 is to relieve the town of Clayton, N. Mex., of any liability to refund to the United States \$12,909.90 of the amounts previously paid to the town under a grant agreement entered into on June 29, 1949, between the town and the Administrator of Civil Aeronautics, acting for the United States, pursuant to the Federal Airport Act, and to authorize and direct the Administrator to pay to the town out of any funds appropriated under the Federal Airport Act an additional amount of \$4,186.18.

These two adjustments would have the effect of treating as allowable project costs under the grant agreement (1) that portion of the cost of constructing an auditorium included in the project which was in excess of the estimated cost of constructing a wing of the airport administration building designed for use as a pilots' lounge and briefing room of a size and type adequate for such airport purposes; and (2) that portion of the cost of constructing a combination swimming pool-fire reservoir included in the project which was in excess of the esti-

mated cost of an ordinary reservoir of a size and type adequate for fire-protection purposes at the airport.

HISTORY OF THE PROJECT

The grant agreement of June 29, 1949, obligated the United States to pay 56.9 percent of those costs determined to be allowable under the Federal Airport Act, of a project for the development of the Clayton Municipal Airport, comprised of the following items of airport development or work:

Grade northeast-southwest runway, taxiways and apron; construct stabilized base for apron and approximately 1,000 feet on each end of runway; construct fire reservoir, administration building, waterline, powerline and access road; turfing.

The testimony indicates that the plans and specifications for the construction of the administration building (including the auditorium wing) and the swimming pool-fire reservoir were submitted to and approved by the Civil Aeronautics Administration before work on those two facilities was commenced. Those plans and specifications clearly indicated the type and design of the facilities involved. Further, the testimony disclosed that the Civil Aeronautics Administration gave its full approval of the construction of those two facilities in accordance with the plans and specifications submitted, and indicated to the town that the entire cost thereof would be eligible for participation in accordance with the terms of the grant agreement.

Prior to making final payment the CAA requested an opinion of the Comptroller General as to the allowability of the costs of the auditorium wing and the swimming pool-fire reservoir. The Comptroller General, in his opinion B-108691 of June 4, 1952, required the Department of Commerce (CAA) to disallow as project costs that portion of the cost of the auditorium which was in excess of the estimated cost of constructing a wing of the building adequate in design and size for use as a pilots' lounge and briefing room only and that portion of the cost of constructing the swimming pool-fire reservoir which was in excess of the estimated cost of an ordinary reservoir of a size and type adequate for fire-protection purposes at the Clayton Municipal Airport.

The town of Clayton was notified of the foregoing disallowance of costs and, in view of the fact that partial payments previously made, in the amount of \$84,269.02, exceeded the Federal share of the total allowable project costs by \$12,909.90, was requested to refund that amount to the United States.

COMMITTEE ACTION

The Department of Commerce, in its report, dated March 22, 1955, and by testimony of the Under Secretary of Commerce for Transportation, has stated that the Department is opposed to the enactment of the bill. The opposition of the Department is based on the legal ineligibility of the two facilities involved. However, the Under Secretary in his testimony stated that while such is the view of his Department, the Department recognizes that the question as to whether the town should be granted relief in view of all the circum-

stances involved and considering the equities of the situation, is a matter for the Congress to decide.

Your committee has very thoroughly and carefully considered all of the testimony regarding the processing of the project, the approval of the auditorium and the swimming pool-fire reservoir, and the subsequent disallowance of portions of the costs of those facilities. Further, your committee has obtained, by letter dated July 12, 1955, from the Administrator of Civil Aeronautics, certain additional information and data relating to the project and the disallowance of costs, for use in the committee's consideration of the matter. A copy of that letter is attached as exhibit A.

The testimony discloses beyond any doubt that the CAA advised the town of Clayton, through established normal channels, prior to the commencement of construction of the auditorium and the swimming pool-reservoir, that those 2 facilities were eligible for Federal aid under the Federal Airport Act and that the Government did in fact enter into a grant agreement, that of June 29, 1949, for a project including those 2 facilities. It is also clear that the approval of those two facilities as part of the project and eligible for grant, was obtained from and given by the Washington office of the CAA and that the town of Clayton was so advised.

Your committee does not take exception to the ruling of the Comptroller General as to the legal ineligibility for Federal aid of facilities of the type involved for an airport such as the Clayton Municipal Airport. However, the committee is of the opinion that the town of Clayton was justified in relying on the determination and advice of the CAA as to the eligibility of the facilities in this case, particularly in view of the fact that it was made known to the town that the Washington or principal office of the agency had made the determination that the facilities were eligible. It is, therefore, the view of your committee that under all of the pertinent circumstances the town of Clayton, as a matter of equity, is entitled to receive the appropriate Federal share of the costs of construction of the auditorium wing of the administration building and of the swimming pool-reservoir which were disallowed pursuant to the Comptroller General's ruling of June 4, 1952.

The town's claim includes certain other costs which were disallowed by the CAA as not meeting the requirements of the Federal Airport Act for reasons other than the ineligibility of the swimming pool-reservoir and auditorium. Such costs do not relate to the construction of those two facilities. Those items of disallowed costs are listed in the letter of July 12, 1955, from the Administrator of Civil Aeronautics (exhibit A) as items (1) through (5). On the basis of the cost-and-grant computations set forth in this letter your committee is of the opinion that the town of Clayton should be relieved of liability to refund to the United States the \$12,909.90 claimed to be due the United States from the town under the grant agreement of June 29, 1949, and that the town should be paid out of funds appropriated under the Federal Airport Act an additional \$4,186.18. To accomplish this objective the committee recommends that the bill S. 218, as amended, do pass.

COMMITTEE AMENDMENT

The amendment to the bill, which the committee has approved, is considered necessary in order to avoid any question as to the amount

of the additional payment which would be due and payable to the town of Clayton upon enactment of a bill such as S. 218 as introduced.

In that form, section 2 of the bill would have merely directed the Administrator of Civil Aeronautics to pay—

an amount equal to 56.90 per centum of the total project costs incurred by such town for airport development under contract numbered C4ca-5800, less any amounts heretofore paid by the Administrator to such town under such contract.

This language might be construed to require that the town be paid the prescribed Federal share of the five items of cost which, as previously noted, the committee believes should continue to be considered unallowable as project costs. Consequently, the committee has approved an amendment to section 2 of the bill which specifies the exact amount to be paid the town as the final payment due and owing under the grant agreement, that amount being, as previously noted, \$4,186.18.

EXHIBIT A

DEPARTMENT OF COMMERCE,
CIVIL AERONAUTICS ADMINISTRATION,
Washington, July 12, 1955.

Hon. A. S. MONRONEY,
*Chairman, Aviation Subcommittee,
Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.*

DEAR SENATOR MONRONEY: In accordance with a request made by Mr. Edward Sweeney, of your staff, I am glad to give you the following information concerning the project for development of the Clayton Municipal Airport, Clayton, N. Mex., which is the subject of the bill S. 218.

The Comptroller General's decision relative to that project required the Department of Commerce to determine, and disallow as project costs: (1) that portion of the cost of constructing the auditorium included in the project which was in excess of the estimated cost of constructing a wing of the airport administration building designed for use as a pilots' lounge and briefing room of a size and type adequate for such airport purposes at the Clayton Municipal Airport; and (2) that portion of the cost of constructing the combination swimming pool-fire reservoir included in the project which was in excess of the estimated cost of "an ordinary reservoir of a size and type adequate for fire-protection purposes at the Clayton Municipal Airport."

Accordingly, the Civil Aeronautics Administration determined that the administration building could have been constructed with an adequate pilots' lounge but without the auditorium at a cost of \$43,031.53, which amount, when deducted from the actual cost of the building as constructed, \$66,819.78, left an ineligible cost of \$23,788.25. Similarly, it was determined that an adequate fire reservoir could have been constructed at a cost of \$14,513, which amount, when deducted from the actual cost of the swimming pool-reservoir as built, \$20,550.59, left an ineligible cost of \$6,037.59. Thus, totaling these 2 amounts, the total amount found to be ineligible as a result of the Comptroller General's decision was \$29,825.84.

In addition, this agency had previously determined that 6 items of cost which had been charged against the project, totaling \$2,309.18, were unallowable as project costs and therefore should not be included in the grant base. These items of cost, and the reasons for disallowing them, are as follows:

Item	Amount	Reason for disallowance
1. Gas pump.....	\$406.80	Work not included in project.
2. Salary of town clerk.....	869.11	Regular salary, cost not directly related to project.
3. 595 feet of pipe (indicated as waste or breakage)....	696.15	Not supported by record evidence.
4. Legal expense (acquisition of property and assessment of curb and gutter liens).....	92.00	Not related to the project.
5. Discount on insurance premiums.....	25.12	Should have been deducted from total insurance premium.
6. Bond expense on swimming-pool bonds.....	220.00	Not considered a cost necessary to accomplishment of the project.
Total.....	2,309.18	

Accordingly, following the Comptroller General's decision, it was determined that the total of the costs unallowable as project costs under the Clayton grant agreement was \$32,135.02, and therefore, in computing the total allowable project costs that amount was deducted from the total costs of the project as audited by the Civil Aeronautics Administration, amounting to \$157,546.48, resulting in a total of \$125,411.46. Using that amount as the grant base, the Federal share of the allowable costs of the project (which is stated in the grant agreement to be 56.9 percent) was computed to be \$71,359.12.

At that time, however, partial payments had already been made to the town of Clayton under the grant agreement in a total amount of \$84,269.02, representing approximately 90 percent of the then-estimated costs of the entire project, including the costs of the auditorium and swimming pool-reservoir. Consequently, it appeared that overpayments had been made to the town in the total amount of \$12,909.90 and demand therefore was made on the town for repayment of that amount.

It is my understanding that your subcommittee would also like to have our views as to the additional amount which should be made payable to the town of Clayton if the subcommittee's decision is to report the bill S. 218 in such form as to require that the costs incurred by the town in constructing the auditorium and swimming pool-reservoir be considered allowable project costs. That amount in our opinion should be \$4,186.18.

This figure is arrived at by: (1) deducting from the total audited cost of \$157,546.48 only the first 5 of the 6 disallowed items of cost listed above, totaling \$2,089.18, resulting in a grant base of \$155,457.30; (2) computing the Federal share of that amount by multiplying it by 56.9 percent, the result being \$88,455.20; and (3) subtracting from that amount the total amount of partial payments made to the town, \$84,269.02. The result, \$4,186.18, is the amount which in our opinion should be paid to the town as the final payment due under the grant agreement, in the event that legislation is enacted making the costs of the auditorium and swimming pool-reservoir allowable project costs.

It will be noted that this computation treats as an allowable project cost the \$220 cost incurred in issuing bonds to finance the town's por-

tion of the cost of constructing the swimming pool-fire reservoir, which is listed above as item 6 of the items of cost disallowed by the Civil Aeronautics Administration prior to referral of this matter to the Comptroller General. Being an incidental cost incurred in connection with the construction of the swimming pool, it is believed that this cost should be considered allowable if the costs of that construction are to be so considered.

However, our computation still treats as unallowable project costs the other 5 items of cost listed above as having previously been disallowed, totaling \$2,089.18. The reason is that those items of cost do not relate to the construction of the auditorium and swimming pool-reservoir and are considered unallowable under the Federal Airport Act for reasons having nothing to do with allowability or eligibility of the costs of constructing those two facilities.

It is hoped that the above will give you the information desired for use by the Aviation Subcommittee in connection with its consideration of the bill S. 218. If we can be of any other assistance in this regard, please advise.

Sincerely yours,

C. J. LOWEN,

Acting Administrator of Civil Aeronautics.

○